

**RULES GOVERNING THE ARKANSAS NUTRIENT MANAGEMENT
PLANNER CERTIFICATION PROGRAM**

TITLE XX

TABLE OF CONTENTS

<u>SUBTITLE</u>	<u>PAGE</u>
I. GENERAL PROVISIONS	
2001.1 PURPOSE.....	3
2001.2 ENABLING LEGISLATION.....	3
2001.3 DEFINITIONS.....	3
2001.4 DUTIES OF OTHER STATE AGENCIES.....	4
II. REQUIREMENTS FOR CERTIFICATION	
2002.1 ELIGIBILITY FOR CERTIFICATION.....	5
2002.2 REVIEW OF APPLICATION.....	5
2002.3 TRAINING COURSE.....	5
2002.4 EXAMINATION.....	6
2002.5 NOTIFICATION OF RESULTS.....	7
III. MAINTAINING CERTIFICATION	
2003.1 TERM OF CERTIFICATION.....	7
2003.2 RENEWAL OF CERTIFICATION.....	7
2003.3 REQUIREMENT TO KEEP CURRENT ADDRESS ON FILE....	8
2003.4 CONTINUING EDUCATION.....	8
2003.5 APPROVAL OF THIRD PARTY COURSES.....	8
IV. RECORDKEEPING	
2004.1 MAINTAINING PLANS.....	9
2004.2 QUARTERLY ACTIVITY REPORTS.....	9
V. FEES	
2005.1 FEES.....	9
VI. PENALTY FOR NONCOMPLIANCE	
2006.1 NONCOMPLIANCE.....	10
2006.2 ADMINISTRATIVE PENALTIES.....	10
2006.3 REVIEW OF SUSPECTED NONCOMPLIANCE.....	10

Proposed

2006.4	EMERGENCY ACTION.....	11
2006.5	REINSTATEMENT AFTER SUSPENSION.....	11
2006.6	RE-CERTIFICATION AFTER REVOCATION.....	11

VII. APPEALS PROCEDURE

2007.1	JUDICIAL REVIEW.....	11
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SUBTITLE I. GENERAL PROVISIONS

Section 2001.1 Purpose

- A. These rules govern the Commission's Nutrient Management Planner Training and Certification program for individuals who prepare Nutrient Management Plans.
- B. Planners prepare Nutrient Management Plans to indicate how Nutrients should be applied to fields and other land for crop production while protecting ground water and surface water from excessive Nutrient enrichment.
- C. Plans contain operating procedures based on expected crop type, existing Nutrient levels in the soil, organic residuals, optimum timing and placement of Nutrients, environmental resource protection, and agronomic practices such as liming, tillage, and crop rotation.
- D. The Commission shall certify the competence of individuals to prepare these plans and determine information to be contained in Nutrient Management Plans.
- E. The Commission shall issue certificates of competence to Certified Nutrient Planners.

Section 2001.2 Enabling and Pertinent Legislation

- A. Ark. Code Ann. §§ 8-4-101, et seq., "Arkansas Water and Air Pollution Control Act."
- B. Arkansas Code Annotated §§15-20-201 et seq., "Arkansas Soil and Water Conservation Commission Act."
- C. Ark. Code Ann. §§15-20-1001, et seq., "Arkansas Soil Nutrient Management Planner and Applicator Certification Act."
- D. Ark. Code Ann. §§ 25-15-201, et seq., "Arkansas Administrative Procedure Act."

Section 2001.3 Definitions

- A. "Administrative Consent Order" means a legal agreement signed by the Director and a Certified Nutrient Planner.
- B. "Arkansas Phosphorus Index" means the risk-based assessment tool referenced in Nutrient Management Plans developed to govern the terms and conditions under which Nutrients may be land-applied as defined in DeLaune, P.B., P.A. Moore, Jr., D.K. Carman, T.C. Daniel, and A.N. Sharpley. 2001. Development and validation of a phosphorus index for pastures fertilized with animal manure. [CD-ROM] In proceedings of International Symposium Addressing Animal Production and Environmental Issues.
- C. "Certified Nutrient Planner" means a person who has been certified by the Commission as competent to develop Nutrient Management Plans.

Proposed

D. “Commission” means the Arkansas Soil and Water Conservation Commission as described in Ark. Code Ann. §§15-20-201, et seq.

E. “Conservation District” means a district created under the Conservation District Law, Ark. Code Ann. §§14-125-101, et seq.

F. “Delegate” means a person or entity appointed by the Director to function in a specific capacity in furtherance of this program and may be another agency, commission, organization, or company, whether public or private.

G. “Director” means the Executive Director of the Arkansas Soil and Water Conservation Commission.

H. “Litter” means byproducts associated with the confinement of Livestock, including excrement, feed wastes, bedding materials, and composted carcasses.

I. “Livestock” means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and Poultry.

J. “Nutrient” means a substance or recognized plant Nutrient, element, or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes Litter, compost as fertilizer, commercially manufactured chemical or organic fertilizers, sewage sludge, or combinations thereof.

K. “Nutrient Applicator” means any person who applies Nutrients to soil or associated crops.

L. “Nutrient Management Plan” means any plan prepared to assist land owners and operators in the proper management of Nutrient sources for maximum soil fertility and protection of the waters within the state.

M. “Poultry” means chickens, turkeys, ducks, geese and any other domesticated birds.

N. “Protective Rate” or “Arkansas Protective Rate” means the agronomic rate or other rate as determined by the Commission of a designated Nutrient that provides for proper crop utilization and prevention of significant impact to waters within the State. For further information, see “Determining the Protective Rates of Poultry Litter and Commercial Fertilizers for Arkansas” by Dr. Philip A. Moore, Jr. and Commission Rules, Title XXII, “Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program.

Section 2001.4 Duties of other State Agencies

The provisions of this chapter shall not limit the powers of other state agencies.

SUBTITLE II. REQUIREMENTS FOR CERTIFICATION

Section 2002.1 Eligibility for Certification

- A. An applicant may obtain certification by satisfying all of the following requirements:
1. Satisfactorily completing and submitting to the Commission an application form;
 2. Attending the Certified Nutrient Planner training course provided by the commission or its delegate;
 3. Obtaining a passing score on the Certified Nutrient Planner examination administered by the Commission or its Delegate;
 4. Submitting a \$100.00 certification fee; and
 5. Submitting a \$25.00 testing fee.
- B. Anyone initially certified by the Natural Resource Conservation Service (NRCS) as a Nutrient Management Planner prior to April 1, 2004 who provides acceptable proof of certification to the Commission will be recognized as certified under this title without further testing or training and may have certification fees waived by the Director. Persons initially certified by the NRCS must still attain required continuing education credit to be re-certified under this Title.

Section 2002.2 Review of Application

- A. The application and supporting documentation to obtain certification will be reviewed by the Commission. The Commission will inform the applicant in writing if it determines that the application is incomplete and will specify why the application is incomplete. When a completed application, supplemental application, or requested information is returned, the Commission will continue action on the application.

Section 2002.3 Training Course

- A. The Commission or its Delegate will periodically provide a Certified Nutrient Planner training session on concepts supporting and related to Nutrient Management Plan development prior to scheduled examinations.
- B. The training materials and examination shall address the elements listed below:
1. General understanding of Nutrient management concepts, including:
 - a. Nutrient cycling on farms,
 - b. the purpose of Nutrient management planning,
 - c. economic aspects of Nutrient use,
 - d. components of Nutrient Management Plan, and
 - e. use of the Arkansas Phosphorus Index and the Arkansas Protective Rate.
 2. Basic soil science concepts, including:

Proposed

- a. physical and chemical properties of soil such as texture, structure, and organic matter, and
 - b. how such characteristics influence crop productivity and adaptation, water run off, and infiltration.
3. Environmental management concepts including:
 - a. the water cycle,
 - b. Nutrient loss mechanisms,
 - c. environmental effects of Nutrients in water,
 - d. identification of high risk sites relating to Nutrient use, and
 - e. appropriate practices to reduce Nutrient loss.
4. Nutrient sampling, testing, and analysis, including:
 - a. the basic sampling procedures,
 - b. relationship of soil test level with likelihood of crop response,
 - c. soil nitrate testing,
 - d. manure and biosolids sampling and interpretation, and
 - e. determining nitrogen levels supplied by legumes.
5. Basic soil fertility concepts, including:
 - a. the relationship of soil ph to Nutrient availability and toxicity,
 - b. essential elements for crop growth,
 - c. limiting factors to crop production,
 - d. cation exchange capacity and related concepts,
 - e. Nutrient cycles, and
 - f. forms of Nutrients in the soils.
6. Fertilizer, manure, biosolid management concepts, including:
 - a. types of fertilizers, and sludges,
 - b. Nutrient analysis of common materials and grades,
 - c. Nutrient content and volume produced,
 - d. basic calculations and blending,
 - e. determination of plant available Nutrients,
 - f. coordination of fertilizers with manure,
 - g. application methods,
 - h. selecting sites for manure application, and
 - i. proper timing and placement.
7. Nutrient management regulatory requirements, laws, and incentive programs affecting Nutrient Planners.

Section 2002.4 Examination

A. The Commission or its Delegate shall administer Certified Nutrient Planner certification examinations at least once per year for a \$25.00 examination fee that must be paid prior to sitting for the test. The Commission may limit the number of applicants taking the examination based upon available examination space.

B. The Commission shall establish a passing score for the examination based on the Commission's determination of the level of examination performance required to show minimal, acceptable competence.

Proposed

C. If an applicant does not achieve a passing score on the examination, he or she may retake the examination at the next scheduled time. An applicant may retake the examination one time with no additional charge by resubmitting the application for certification.

D. All applications must be received ten (10) days prior to the examination date set by the Commission.

E. An applicant who is unable to take an examination at the scheduled time shall notify the Commission at least five (5) days prior to the date and time of the examination. The applicant will be rescheduled for the next examination. Failure to timely notify the Commission may require the applicant to submit new testing fees.

Section 2002.5 Notification of Results

A. Each applicant shall be notified of results in writing within sixty (60) days of the completion of the examination and shall also receive notice of whether certification has been approved.

B. An applicant denied certification for a reason other than test failure may request review of the decision pursuant to Commission Rules, Title I, Rules of Organization and General Operation of the Arkansas Soil and Water Conservation Commission.

SUBTITLE III. MAINTAINING CERTIFICATION

Section 2003.1 Term of Certification

A. Certification shall be valid for a period of three (3) years and will automatically expire on January 1 of the third year following certification if the certificate holder fails to properly renew certification.

B. Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all requirements, including the examinations unless waived by the Commission for good cause.

Section 2003.2 Renewal of Certification

A. Certified Nutrient Planner must renew certification prior to the certificate's expiration date by complying with all of the following requirements:

- (1) Submission of the renewal application form;
- (2) Payment of a \$100 renewal fee to the Commission; and
- (3) Completion of at least four (4) hours of continuing education pre-approved by the Commission within the last three (3) years.

Proposed

B. If the Certified Nutrient Planner has knowingly violated Commission rules or refused to pay fines assessed by the Commission, the Commission may choose not to renew certification.

Section 2003.3 Requirement to keep current address on file

A. A Certified Nutrient Planner is required to provide the Commission with current address and other requested contact information within fifteen (15) working days of change so that the Commission can advise him or her of updates to law and rules as well as provide notice of complaints and hearings.

B. Service of notice sent by mail will be addressed to the most recent address on file with the Commission. Registered or Certified Mail sent with proper postage and to the last known address that is returned unclaimed shall be considered adequate notification of notice served.

C. Failure to update Commission staff with current address may be considered refusal to accept mail which is a violation of this Title and could result in disciplinary action.

Section 2003.4 Continuing Education

A. A Certified Nutrient Planner must have proof of four (4) approved continuing education credits completed during the three previous years to renew his or her certification. Each continuing education credit refers to an hour of instruction, approved for credit by the Commission and designed to provide further knowledge of Nutrient management planning.

B. An Certified Nutrient Planner may either take continuing education courses provided by the Commission or pre-approved classes provided by third parties.

Section 2003.5 Approval of Third Party Courses

A. Programs submitted for pre-approval shall be considered by the Commission only if the sponsor or attendee submits a written description. The description must include the names and qualifications of the presenters, the time and location, the proposed number of credits, and the program's objectives. Programs may be held within or without the state, and must be related to Nutrient management planning or compliance with the Commission's Rules and other governmental and industry requirements. The Commission at its discretion may approve a course for credit after the course has taken place.

B. Program sponsors must provide written proof of attendance to attendees following each event and must provide the Commission with a list or lists of attendees by January 1 of each year. Planners are also responsible for obtaining proof of attendance and sending that proof into the Commission when certification is renewed.

SUBTITLE IV. RECORDKEEPING

Section 2004.1 **Maintaining plans**

- A. The Commission may periodically inspect Nutrient Management Plans prepared by Certified Nutrient Planners and other records for compliance with this Title. A complete copy of each Nutrient Management Plan prepared shall be made available for inspection by Commission personnel upon request.
- B. The planner must also maintain a summary listing of all Nutrient Management Plans prepared for each landowner or operator and the dates the plans were prepared or revised.
- C. The records required by this section shall not be public records.

Section 2004.2 **Quarterly Activity Reports**

A Certified Nutrient Planner shall file a quarterly activity report with the Commission, containing the following information:

1. Name and certificate number of the Certified Nutrient Planner; and
2. Number of Nutrient Management Plans completed.

SUBTITLE V. FEES

Section 2005.1 **Fees**

- A. The Director may establish and collect fees for services provided by the Commission to offset the administrative cost for the certification program, including photocopying, handling and mailing, providing publications, presenting education programs, and processing dishonored checks. This list may be updated from time to time as the Director determines necessary.
- B. Fees are non-refundable and shall not be prorated.
- C. The Commission will assess the following fees:
1. certification = \$100.00;
 2. examination fee = \$25.00; and
 3. re-certification = \$100.00.
- D. All fees collected by the Commission shall be deposited in the state treasury and shall be used exclusively for the operation of the Nutrient management training and certification program.

SUBTITLE VI. PENALTY FOR NONCOMPLIANCE

Section 2006.1 Noncompliance

It shall be a violation of Ark. Code Ann. §§ 15-20-1001 et seq. and these rules for a Certified Nutrient Planner to:

- (1) Provide misleading, false, or fraudulent information in applying for certification;
- (2) Provide the Commission with any misleading, false or fraudulent plan;
- (3) Offer or perform Nutrient planning as a Nutrient planner certified under these rules without certification;
- (4) Offer or prepare a Nutrient Management Plan that does not comply with the requirements of Title XXII, Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program, subtitles III and IV for Nutrient Management Plans, and if applicable, poultry litter management plans;
- (5) Fail to promptly provide any record or plan or to allow the Commission access to inspect any records required to be kept by these rules; or
- (6) Violate any other requirement imposed by rule in this Title.

Section 2006.2 Administrative penalties

A. The Commission may impose a fine not to exceed one-thousand dollars (\$1,000) for each violation of Ark. Code Ann. §§ 15-20-1001 et seq. and these rules.

B. The Commission may also choose to suspend, revoke, annul or withdraw the planner's certification.

Section 2006.3 Review of Suspected Noncompliance

A. Upon complaint or suspicion of suspected violation of 2008.1, Commission staff may investigate and recommend disciplinary action to the Director.

B. After reviewing evidence provided to him or her by Commission staff regarding a possible violation, the Director may issue an Administrative Consent Order to the alleged violator, stating the violation and the resulting disciplinary action.

C. The alleged violator may choose to sign the Administrative Consent Order agreement and thereby agree to the penalties contained within the Order. The planner will also be deemed to have consented to the Order if he or she fails to respond and the Commission has received a certified mail receipt or other proof showing that the alleged violator was served a copy of the Administrative Consent Order.

D. If the alleged violator disputes that a violation occurred or believes the punishment was too harsh, the planner must respond to the Administrative Consent Order within ten (10) days by requesting a hearing before the Commission. The hearing will be conducted

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in accordance with Commission Rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order.

E. The Commission will not take final administrative action against persons accused of violating this Title or Ark. Code Ann. §§ 15-20-1001 et seq. until the accused person has executed an Administrative Consent Order or been given opportunity for a hearing to review the decision under Title I.

Section 2006.4 Emergency Action

If the Commission finds that the public health, safety, or welfare imperatively requires emergency action and incorporates that finding in its order, the agency can summarily suspend, limit, or restrict certification prior to holding an adjudicative hearing, so long as an adjudicative hearing is held within ten days pursuant to Title I.

Section 2006.5 Reinstatement after Suspension

No suspended Certified Nutrient Planner will be reinstated until the individual satisfies any condition imposed by the Commission or the Director as a condition of reinstatement.

Section 2006.6 Re-certification after Revocation

No Certified Nutrient Planner whose certification has been revoked will be recertified until the individual satisfies any condition imposed by the Commission or the Director as a condition of re-certification. No individual will be re-certified unless the Commission approves re-certification by a majority vote.

SUBTITLE VII. APPEALS PROCEDURE

Section 2007.1 Judicial Review

The executed Administrative Consent Order or Commission decision shall constitute final agency action for the purpose of judicial review. Judicial review of final agency action shall be as provided by the Arkansas Administrative Procedure Act, Ark. Code Ann. §§ 25-15-201 et. seq.